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Filing date: **02/23/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219335
Party	Plaintiff Braniff International Property Company
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVENUE WEST, PBM 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
Submission	Other Motions/Papers
Filer's Name	Matthew H. Swyers
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	02/23/2015
Attachments	Motion to Accept Opposition to Motion Late.pdf(190299 bytes) Motion to Accept Opposition to Motion Late Exhibits.pdf(296341 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of Serial Nos. 86/278,358 & 86/319,634,
For the marks  & BRANIFF INTERNATIONAL AIRWAYS,

Braniff International Property Company,

Opposer,

vs.

Braniff Holdings, Inc.,

Applicant.

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Opposition No. 91219335

**MOTION FOR LEAVE TO FILE OPPOSITION TO
APPLICANT’S MOTION TO FILE ANSWER LATE**

COMES NOW the Opposer, Braniff International Property Company (hereinafter “Opposer”), by counsel, and submits the instant Motion for Leave to File Opposition to Applicant Braniff Holdings, Inc.’s (hereinafter “Applicant”) *Memorandum of Law*. In support thereof Opposer states as follows:

STATEMENT OF THE CASE

1. On or about November 13, 2014 Opposer filed its Notice of Opposition instituting the instant opposition proceeding using the correspondence address listed at that time.
2. On November 23, 2014 Applicant sent an email to Opposer’s advisor regarding the Opposition Proceeding.
3. On or about December 8, 2014 the U.S. Postal Service returned the Notice of Opposition previously served on Applicant.
4. On or about December 9, 2014 Applicant filed a Notice of Ineffective Service.

5. On December 30, 2014 the Board reset the trial dates allowing the Applicant until January 18, 2015 to file its answer in the instant proceeding.

6. On or about January 30, 2015 Applicant filed their Answer to Opposer's Notice of Opposition.

7. On or about January 31, 2015 Applicant filed the instant *Applicant's Memorandum of Law* which appears to be serving as Applicant's Motion for Leave to File Answer Late.

8. On or about February 20, 2015 Opposer believed he had filed *Opposer's Opposition to Applicant's Motion for Leave to File Answer Late*. See Exhibit A.

ARGUMENT

On February 20, 2015 Counsel for Opposer believed he had filed *Opposer's Opposition to Applicant's Motion for Leave to File Answer Late* and served the same by U.S. Mail. However, upon review of the TTAB and a file review on February 23, 2015 Opposer became aware that *Opposer's Opposition to Applicant's Motion for Leave to File Answer Late* was not validated and, therefore, was not submitted in a timely manner on February 20, 2015. See Exhibit B. Opposer's failure to timely file the opposition to Applicant's *Memorandum of Law* was inadvertent as Counsel for Opposer only became aware of this on the review on February 23, 2014. Moreover, Opposer's failure to timely file its opposition to Applicant's *Memorandum of Law* was not as a result of willful conduct or gross neglect on the part of the Applicant. Furthermore, the Board's acceptance of *Opposer's Opposition to Applicant's Motion for Leave to File Answer Late* will not cause a delay in this proceeding, nor will it cause undue prejudice upon Applicant. As such, for good cause show, Opposer, by counsel, respectfully requests the Board accept *Opposer's Opposition to Applicant's Motion for Leave to File Answer Late*.

CONCLUSION

WHEREFORE for good cause considered, Opposer Braniff International Property Company, by counsel, respectfully requests the Board grant Opposer's Motion for Leave to File Opposition to Applicant's Motion for Leave to File Answer Late in the instant case and accept the attached *Opposer's Opposition to Applicant's Motion for Leave to File Answer Late* in this matter.

Respectfully submitted this 23rd day of February, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, PBM 151

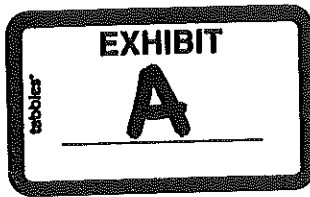
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Counsel for Opposer



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of Serial Nos. 86/278,358 & 86/319,634,
For the marks  & BRANIFF INTERNATIONAL AIRWAYS,

Braniff International Property Company,

Opposer,

vs.

Braniff Holdings, Inc.,

Applicant.

Opposition No. 91219335

**OPPOSER'S OPPOSITION TO
APPLICANT'S MOTION TO FILE ANSWER LATE**

COMES NOW the Opposer, Braniff International Property Company (hereinafter "Opposer"), by counsel, and submits the instant opposition to Applicant Braniff Holdings, Inc.'s (hereinafter "Applicant") *Memorandum of Law* on the grounds more fully set forth below.

STATEMENT OF THE CASE

1. On or about November 13, 2014 Opposer filed its Notice of Opposition instituting the instant opposition proceeding using the correspondence address listed at that time.
2. On November 23, 2014 Applicant sent an email to Opposer's advisor regarding the Opposition Proceeding. *See* Exhibit 1.
3. On or about December 8, 2014 the U.S. Postal Service returned the Notice of Opposition previously served on Applicant.
4. On or about December 9, 2014 Applicant filed a Notice of Ineffective Service.
5. On December 30, 2014 the Board reset the trial dates allowing the Applicant until January 18, 2015 to file its answer in the instant proceeding.

6. On or about January 30, 2015 Applicant filed their Answer to Opposer's Notice of Opposition.

7. On or about January 31, 2015 Applicant filed the instant *Applicant's Memorandum of Law* which appears to be serving as Applicant's Motion for Leave to File Answer Late.

ARGUMENT

Good cause why default judgment should not be entered against a defendant, for failure to file a timely answer to the complaint, is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action. TBMP § 312.02.

In this case the Applicant has not shown that the delay in filing was not the result of willful conduct or gross neglect on the part of Applicant. Per the email dated November 23, 2014 from Applicant to Opposer's advisor, Applicant was aware that an opposition had been filed in the TTAB. *See Exhibit 1.* This is in direct opposition to Applicant's representation in his *Memorandum of Law* that he learned of the deadline to file a response after the deadline had already passed. *See Applicant's Memorandum of Law.* Applicant knew about the opposition the week after it was filed and the resulting delay prior to filing an answer was the result of gross neglect if not outright willful conduct. As such, Applicant's Motion for Leave to File Answer Late should be denied.

Furthermore Applicant has not stated a meritorious defense to their action but alleges only one reason for the failure to timely respond to the Notice of Opposition. The reason, "an untimely death to a director's immediately [*sic*] family member," (*see Applicant's Memorandum*

of Law) is understandable; however, the fact that the death did not occur until January 10, 2015 does not excuse Applicant's duty to respond in a timely manner as Applicant was aware of the proceeding as early as November 23, 2014, a month and a half prior to the untimely death. As such, Applicant's Motion for Leave to File Answer Late should be denied.

CONCLUSION

WHEREFORE for the premises considered, Opposer Braniff International Property Company, by counsel, respectfully moves the Board for an order denying the relief requested in *Applicant's Memorandum of Law* acting as a Motion for Leave to File Answer Late and, instead, enter a default judgment for Opposer.

Respectfully submitted this 20th day of February, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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Counsel for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of Serial Nos. 86/278,358 & 86/319,634,
For the marks  & BRANIFF INTERNATIONAL AIRWAYS,

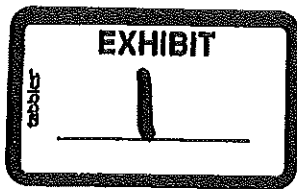
Braniff International Property Company,	:	
	:	
Opposer,	:	
	:	
	:	Opposition No. 91219335
vs.	:	
	:	
Braniff Holdings, Inc.,	:	
	:	
Applicant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleading this 20th day of
February, 2015, to be served, via first class mail, postage prepaid, upon:

Anthony J Rossi
Braniff Holdings Inc
200 Park Ave, Suite 1700
New York, NY 10166-0005

/Matthew H. Swyers
Matthew H. Swyers



From: Rossi, AJ <aj.rossi@gobraniff.com>
Sent: Sunday, November 23, 2014 3:57 AM
To: mmb777e; Greg Braniff; Greg Braniff; James Campanella; Mohiddin Khwaja; John kenny; Robert Luke; Robert Frongillo; Stan Payne; John Jackson; dave lewis; Bill Carroll; Bill Carroll; Bill Joynes; blitzfrances; Richard Ziskind; John Horvath; MARK PYLE; Marcel Prud'home; wagner7376; bbenitez; Ed Boyington; andreycabc123; easheppard
Cc: stanpayne
Subject: USPTO Opposition Claim ... (FRAUD) Braniff International Property Corporation
Importance: High

USPTO Opposition Claim ... (FRAUD)

To: Ben Cass

November 23, 2014 1:59 AM

Nice try Ben....

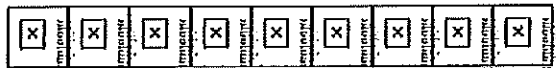
Braniff International Property Corporation... really, seriously! You really need to grow up pal. We have VERY deep pockets and are prepared to see this through my friend. Oh and by the way, we have spoken to OUR New York attorneys tonight by phone and are filing an injunction against your SHAM Braniff International Property Corporation that you just literally formed this past September. And we have spoken to Susan (Elizabeth) Sheppard, and she has given us sworn testimony to the inflammatory comments that YOU made against us sighting that Braniff will never fly again. Yeah well, we'll see about that my friend. We'll see you in court, And we will be filing a 'Tortious Interference suit against you and your cronies first thing Monday in the United States District Court Southern District of New York naming you and the rest of your musketeers friends as defendants, and will be seeking damages totaling 150M dollars that we have capitalized thus far. Nighty Night... sleep tight. OH and BTW, our communications team WILL be issuing a statement of intent on your frivolous action items waged against Braniff International, on your loyalty band wagon with Braniff Flying Colors... when everybody that is supportive of this measure reads about this, you won't be able to give away your stuff. See the difference between you and us, we're creating JOBS... your taking away from that opportunity, and when we inform the Texas Attorney Generals office about this stupid little ploy of yours, they may be inclined to pursue a case against you themselves... something to think about pal !



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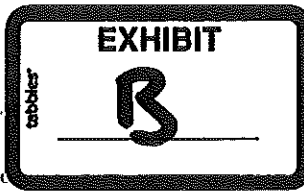


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PTO-2151 (Exp. 05/31/2017)
OMB No. 0651-0040 (Exp. 05/31/2017)

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219335
Party	Plaintiff Braniff International Property Company
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Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	02/20/2015
Attachments	Opposition to Motion to File Answer Late.pdf(191570 bytes) Opposition to Motion to File Answer Late Exhibit.pdf(95027 bytes)

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